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DRAPER *v.* COMMONWEALTH.

Sept. 11, 1913.

[79 S. E. 322.]

1. Husband and Wife (§ 313*)—Nonsupport—Evidence.—In a prosecution of a husband for total nonsupport of his wife, evidence that accused had two small children by a former marriage dependent on him for support was inadmissible.

[Ed. Note.—For other cases, see Husband and Wife, Cent. Dig. § 1110; Dec. Dig. § 313.* 7 Va.-W. Va. Enc. Dig. 228.]

2. Husband and Wife (§ 305*)—Nonsupport—Defenses.—That a wife, after separation because of her husband's fault, took service and supported herself was no defense to a prosecution for nonsupport.

[Ed. Note.—For other cases, see Husband and Wife, Cent. Dig. § 1103; Dec. Dig. § 305.* 7 Va.-W. Va. Enc. Dig. 228.]

3. Husband and Wife (§ 305*)—Nonsupport—Prosecution—Motive of Complainant.—A prosecution of a husband for nonsupport of his wife being by the commonwealth, the wife's motive in testifying against him is immaterial.

[Ed. Note.—For other cases, see Husband and Wife, Cent. Dig. § 1103; Dec. Dig. § 305.* 7 Va.-W. Va. Enc. Dig. 228.]

Error to Corporation Court of Roanoke.

James Draper was convicted of desertion and nonsupport, and he brings error. Affirmed.

Hairston & Willis, of Roanoke, for plaintiff in error.

The Attorney General and *Samuel W. Williams*, of Richmond, for the Commonwealth.

C. L. RITTER LUMBER CO., Inc. *v.* COAL MOUNTAIN MINING CO.

Sept. 11, 1913.

[79 S. E. 322.]

1. Appeal and Error (§ 503*)—Jurisdiction—Burden of Proof.—The burden of showing the existence of appellate jurisdiction is on the appellant, which jurisdiction must affirmatively appear from the record.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2310, 2311; Dec. Dig. § 503.* 1 Va.-W. Va. Enc. Dig. 476; 14 Va.-W. Va. Enc. Dig. 71; 15 Va.-W. Va. Enc. Dig. 57.]

2. Appeal and Error (§ 150*)—Appellate Jurisdiction—Party Secondarily Liable—Statutes.—Where a grantee of the timber on certain land was decreed only secondarily liable in a suit to enforce a vendor's

*For other cases see same topic and section NUMBER in Dec Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

lien for the balance of the purchase price, and then only to the extent of the deficiency after a sale of the land, such grantee, prior to such sale, was not entitled to appeal under Code 1904, § 3454, giving a party the right of appeal from an interlocutory decree adjudicating the principles of a cause.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 934-936; Dec. Dig. § 150.* 1 Va.-W. Va. Enc. Dig. 442; 14 Va.-W. Va. Enc. Dig. 64; 15 Va.-W. Va. Enc. Dig. 54.]

3. Appeal and Error (§ 150*)—Right of Appeal—Party Secondarily Liable—Statutes.—Code 1904, § 3455, provides that no petition shall be presented for appeal from or writ of error or supersedeas to any final judgment, decree, or order of any court, where the controversy is for a matter less in value or amount than \$300, unless there be drawn in question a freehold or franchise, or the title or bounds of land, or the order of the State Corporation Commission, or some matter not merely pecuniary. Held, that where a grantee of the timber on certain land was decreed only secondarily liable for a deficiency occurring on a sale of the land in satisfaction of a vendor's lien, such grantee, prior to such sale, when only it could be ascertained that a deficiency in excess of \$300 remained, could not appeal from such decree.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 934-946; Dec. Dig. § 150.* 1 Va.-W. Va. Enc. Dig. 477; 14 Va.-W. Va. Enc. Dig. 71; 15 Va.-W. Va. Enc. Dig. 57.]

Appeal from Circuit Court, Tazewell County.

Suit by the Coal Mountain Mining Company against R. A. Ayers and others. From a decree in favor of complainant, but holding the C. L. Ritter Lumber Company, Incorporated, secondarily liable only for a balance due on the sale of certain land to satisfy complainant's vendor's lien, the Lumber Company appeals. Dismissed.

Geo. W. St. Clair, of Tazewell, for appellant.

Greever & Gillispie, of Tazewell, for appellee.

MULLINS *v.* COMMONWEALTH.

Sept. 11, 1913.

[79 S. E. 324.]

1. Indictment and Information (§ 87*)—Form and Requisites—Allegation of Time—Surplusage.—Where an indictment charged that accused on the — day of —, in the year 19—, and within the last two years, did unlawfully sell, by retail, whisky, etc., with—

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.